



Briefing Paper

The Role of AfCFTA in the Digital Era

By Sara Khan and Yasmin Ismail

Summary

This briefing paper summarizes a study by CUTS titled “Mobilising E-Commerce for Development in Africa through AfCFTA” authored by Yasmin Ismail and available at <https://bit.ly/2zvHpHI>. It highlights the study’s key findings with regard to the role AfCFTA can play in harmonizing Africa’s national and regional approaches to harnessing the full potential of e-commerce. It draws some key recommendations to form a roadmap towards building a digital ecosystem across the African continent by exploring recent strategies and policies deployed or in process of deployment by a number of Regional Economic Communities and African Governments. Finally, it highlights the potential impact of the current e-commerce discussions under the WTO, on the continent’s policy space.

Introduction

The 1990s witnessed an unprecedented rise in the role of Information and Communications Technology (ICT) in our everyday lives. Later in the 2000s digital applications gradually invaded different social and economic activities to become nowadays one of main factors leading growth of the economy.

UNCTAD's 2019 Digital Economy Report identified two recent trends as key drivers for the expansion of the digital economy i.e. digital data and digital platforms. The digital platform revolution has greatly changed the way in which firms connect to 'others' and is reshaping the world economy and business ecosystem. The fast spread of transaction platform business models and data value chains, contributed to lowering trade costs and to the rise of electronic commerce (e-commerce and/or 'Digital Trade' and 'e-Trade'¹.) as the future of global trade. Over the years the activities falling under e-commerce have expanded to encompass almost every aspect of the economy making it hard for policy makers and the various concerned international organisations to fully and comprehensively define the phenomenon.

This study adopted the OECD definition which considers that 'an e-commerce transaction is the sale or purchase of goods or services, conducted over computer networks by methods specifically designed for the purpose of receiving or placing of orders. The goods or services are ordered by those methods, but the payment and the ultimate delivery of the goods or services do not have to be conducted online through digital network means (webpages, extranets, electronic data interchange [EDI] networks)².

¹ E-commerce, e-Trade and digital trade are mostly used interchangeably while recognising that they may be used/interpreted differently. For example, the U.S. and Canada prefer to use 'digital trade' with the difference of excluding ordering and delivery of 'physical good'. In the World Trade Organisation Joint Statement Initiative where a group of WTO members are negotiating e-commerce provisions, digital trade is used interchangeably with e-commerce. Also, some trade experts and academics like Foster & Azmeh (2018), consider 'digital trade' as an expansion in focus towards regulating a broader set of cross-border digital issues.

E-commerce New Cross-border Process Chain

Just as defining e-commerce is a challenge, measuring it is also far from being an easy task. UNCTAD's 2019 Digital Economy Report, estimates that in many countries e-commerce activities are taking up a larger share of GDP even exceeding 50% in some. Of this share B2B e-commerce currently has the largest share of e-commerce globally, while B2C e-commerce is the fastest growing, particularly when it comes to cross-border trade.

B2C e-commerce has given rise to a new process chain, seen in Figure 1 below, which consists of four stages: establishing an online business, using international e-payments, providing cross-border delivery and providing after sales services³. Of these 4 steps the two that make up the "digital economy ecosystem" are the first two⁴. The ecosystem is so called because it involves a large support system beyond just the online platform like many third parties and financial support services.

Figure 1: Cross- border E-commerce Process Chain



Source: ITC, 2016, p. 4.

Digital “Ecosystems” and Development

Establishing a digital ecosystem is especially beneficial for Small and Medium Enterprises

² OECD. (2011). OECD guide to measuring the information society 2011. OECD Publishing. Available at: <https://doi.org/10.1787/9789264113541-en>

³ ITC. (2016). Bringing SMEs onto the e-Commerce Highway, Geneva: ITC. Available at: http://www.intracen.org/uploadedFiles/intracenorg/Content/Publications/Bringing%20SMEs%20onto%20the%20e-Commerce%20Highway_final_250516_Low-res.pdf

⁴ AU. (2019a). The Draft Digital Transformation Strategy for Africa (2020 – 2030), Sharm Elsheikh: African Union. <https://www.tralac.org/documents/resources/african-union/3013-the-draft-digitaltransformation-strategy-for-africa-2020-2030/file.html>

(SMEs) to upscale their businesses, go beyond their borders and access new and larger markets. Increased productivity among SMEs in e-commerce can benefit both developed and developing countries on their development trajectory. Digital businesses and ecosystems offer a unique opportunity especially to LDCs as they incur much lower cross-border transaction costs.

According to ITC, 'SMEs make up the bulk of the economic tissue of an economy. They account for approximately 50 per cent of GDP and 60-70 per cent of total employment worldwide'⁵. This means a lot more to developing countries and LDCs in terms of stimulating development effects and accelerating achieving SDGs.

More and more leaders and policymakers of the developing world are striving to develop digitalisation strategies and to promote SMEs' adoption of e-commerce online platforms. Also more and more Regional Trade Agreements (RTAs) whether involving developed countries or developing countries or both, include e-commerce related provisions or specific chapters. Realising its potential to promote growth and development. E-commerce is now at the centre stage of policy making at the national, regional and international levels. This is particularly evident in the African continent. While Africa lags behind the world according to UNCTAD's B2C e-commerce Index, its leaders have been accelerating their efforts to bring the continent into the Industry 4.0 cross-border value chains.

The Rise of E-commerce in Africa

Africa's young population gives it the benefit of having an active work force and a readiness

⁵ ITC. (2017b). New Pathways to E-commerce: A Global MSME Competitiveness Survey. Geneva: ITC. Available at: [http://www.intracen.org/uploadedFiles/intracenorg/Content/Publications/New%20Pathways%20to%20Ecommerce_Low%20res\(2\).pdf](http://www.intracen.org/uploadedFiles/intracenorg/Content/Publications/New%20Pathways%20to%20Ecommerce_Low%20res(2).pdf)

⁶ Map available at: Briter Bridges (2020), Innovation Maps. Available at: <https://briterbridges.com/innovation-maps>

among the population to accept new technology and the internet. A recent mapping of e-commerce platforms across Africa, suggests that their count surpassed 250 active e-commerce companies⁶. Some of those companies were able to cross the borders and to reach-out to other African countries' markets, which indicates the role e-commerce can play as promoter for Intra-african trade. According to UNECA *et al.* 2017⁷, intra-African trade creates more avenues of growth and productivity than does trade with any other market. Thus, promoting e-commerce growth, capitalises on the potential to reduce poverty, bridges the gender gap, and increases employment and entrepreneurship opportunities in Africa.

However, the digital divide i.e. the varying speed of different countries in digitalizing impacts how ready certain countries are to participate in e-commerce. Africa is still lagging in this area because of weak infrastructure and logistical support systems necessary for online trade. Empowering and supporting SMEs to adopt online business models and overcome each step of the e-commerce cross-border chain can be the key for the continent to leapfrog the gap separating it from global value chains.

Challenges across the Cross-border E-commerce Chain (A bottom-up approach)

In each step of the cross-border e-commerce process chain, African SMEs face a specific category of challenges, those are: enabling issues (digital infrastructure; access to internet... etc.), facilitation issues (lack of systems that support international e-payments, electronic signatures, electronic contracts and paperless trading), market access issues (custom duties, delivery costs, and valuation and pricing issues) and aftersales issues (trust issues that arise due to weak regulatory framework related to consumer protection, cybersecurity, privacy

⁷ UNECA. AU & AfDB (2017a). Assessing Regional Integration in Africa VIII: Bringing the Continental Free Trade Area About, Addis Ababa : ECA Printing and Publishing. Available at: https://www.uneca.org/sites/default/files/PublicationFiles/aria8_eng_fin.pdf

protection... etc.).

These four key categories of issues can be classified according to a bottom-up pyramidal approach as they occur along the chain process (See Figure 2).

Figure 2: A Bottom-Up (Pyramidal) classification of e-commerce issues and challenges:



Source: Kaukab (2017) cited in Ebrahimi Darisinouei (2017)⁸.

According to UNCTAD B2C E-commerce Index, the African continent greatly lags behind the rest of the world when it comes to addressing those barriers and challenges and creating a suitable environment for SMEs to establish online businesses and navigate across a B2C e-commerce cross-border chain. The continent also lags behind in adopting key e-commerce legislations identified by UNCTAD as: electronic transactions laws, cybersecurity laws, consumers' protection laws and privacy protection laws. Furthermore once crossing the borders, the late-coming African SMEs face an unfair competition by global MNEs enjoying considerable advantages which risks further aggravating and emphasizing the *de facto* inequality. So while e-commerce is a growing reality that can revolutionize the African continent and its trade relations, it can also bring about a widening inequality between the continent and the more advanced worlds.

E-commerce and AfCFTA

The African Union Commission (AUC) Decision

taken in February 2020, to include a phase III negotiations for a continental e-commerce protocol under the AfCFTA agreement, represents an opportunity for Africa to best benefit from e-commerce development potential and make strides in the era of a digitalised global economy.

AU Draft Digital Transformation Strategy: the Potential Starting Point for an eAfCFTA

A year before the AUC decision, the AU Executive Council has laid groundwork for a coordinated digitalization agenda, labelled the *AU Digital Transformation Strategy (DTS) for Africa (2020-2030)*. The study examined the draft of the strategy published in February 2019 and found that its scope goes beyond digital trade and has potentially laid the foundation for building a single integrated digital market through the AfCFTA. Therefore, this strategy can form a starting basis for phase III AfCFTA e-commerce protocol negotiations.

The strategy takes on an ecosystem approach to developing a digital economy. It also adopts a bottom-up perspective for policy interventions which benefits local stakeholders and creates a support system for local SMEs. The digital ecosystem envisaged in the strategy, consists of: two centred pillars, four founding enablers and cross-cutting issues. The pillars are made up of digital platforms and digital financial systems; the four enablers include digital skills development, digital infrastructure, cultivation of entrepreneurial and innovative talent, and the cross-cutting issues refer to enhancing Africa's e-commerce legislations and regulatory frameworks.

Based on this strategy and looking back at the e-commerce process chain, we can deduct how the AfCFTA can expedite e-commerce negotiations at each step. Enabling issues can be reduced by cooperating and promoting digital skills training and awareness programmes targeted at African MSMEs. Facilitating issues can be tackled by promoting the adoption of e-financial and e-payment services, as well as e-contracts, e-signatures and paperless trade. Market access

⁸ Ebrahim Darsinouei, A. (2017). Understanding E-Commerce Issues in Trade Agreements: A Development Perspective Towards MC11 and Beyond, Geneva:

CUTS International, Geneva. Available at: <http://www.cuts-geneva.org/pdf/STUDY%20-%20E-Commerce%20Towards%20MC11.pdf>

issues can be dealt with by enabling market entry of technology-driven financial service providers and monitoring parcel delivery services to observe where issues arise. Finally, building consumer and business trust issues can be promoted by coordinating and adopting e-commerce regulatory frameworks and legislations at the continental and national levels.

The AU DTS ecosystem described above consists of a very well established first step towards building a conducive environment for digital platform-based businesses and cross-border e-commerce. A second step would be to build upon existing best practice policies and strategies at the national and regional level.

Promotion of African E-commerce Best Practices

ICT and E-commerce have been actively promoted across Africa, both at the national level, as well as at the level of the Regional Economic Communities (RECs) representing the building blocks of the African Integration. Some of the actions taken by RECs concerning different topic areas within e-commerce hold a lot of potential for the AfCFTA.

RECs: COMESA, SADC and EAC

The Common Market for Eastern and Southern Africa (COMESA) is the closest among the RECs to attempt to manifest the digital ecosystem as envisaged by the AU DTS. It aims to implement the Digital Free Trade Area (DFTA) concept and minimizing physical barriers to cross border trade through three mechanisms: e-Trade which is a platform for online trade especially beneficial for small scale traders; e-Logistics which is promoting ICT use; and e-Legislation which ensures a regulatory environment that makes it safer to carry out online payments. COMESA also uses an approved multilateral netting system called the Regional Repayment and Settlement System (REPSS) primarily for wholesale and trade transactions. The REPSS aims to comply with international best practices and creates interoperability between Central Bank and

Commercial Banks for efficient intra-regional payments and liquidity management.

Southern African Development Community's (SADC) E-commerce strategy, adopted in 2012, focuses on B2B and B2C trade. The strategy rests on 4 pillars, each relating to a specific policy area from the AU DTS digital ecosystem plan. They are as follows: enabling an e-commerce environment, developing a capacity for e-commerce amongst member states, strengthening e-commerce sub-regional and national infrastructure, and institutionalizing a framework to implement and govern the current strategy at the regional level. SADC is also looking to implement a strategy similar to COMESA's DFTA which will, in the long run, meet AfCFTA's goal of harmonizing regulations across the continent. According to Cenfri (2018)⁹ as cited in the study, SADC has also implemented a Payments Integrations System in May 2009 that creates interoperability between banks of member countries to facilitate cross-border transactions. The project created the SADC Real Time Gross Settlement System (RTGS), which became operational in July 2013 in four countries of the Common Monetary Area (CMA) and has significantly promoted regional financial integration¹⁰.

SADC is also looking to use an automated regional clearing house (RCH) to facilitate retail cross border payments. The main obstacle to this is the costly infrastructure and moving to paperless processes within the government (Cenfri, 2018).

According to UNECA *et al.* (2019a) as cited in the study, the East African Community (EAC) is the most advanced REC in regional integration, establishing a common market in January 2010 that provides for the free movement of goods, services, capital, labour and persons, plus rights of establishment and residence. EAC has adopted a set of e-transaction policy recommendations and has made strides in utilizing ICT applications like common documentation, creating a single window for intra-EAC customs ports and developing cross-border mobile telephone services. In 2019, the World Bank published a three step bottom-up approach on setting up a Single Digital Market (SDM) in

⁹ Cenfri. (2018). Payment systems in sub-Saharan Africa. Note 2: Case studies of National and Regional payment systems market development. Cape Town: Centre for Financial Regulation and Inclusion. Available at:

<https://cenfri.org/wp-content/uploads/2018/12/Payment-systems-in-SSA-Note-2.pdf>

¹⁰ The CMA consists of Lesotho Namibia, South Africa and Swaziland

keeping with the AU DTS approach. The first step is to establish a single connectivity market that will encourage investment by reducing barriers to regional telecom services. The second step is to set up a single data market that will secure data exchange processes and storage across borders. The last step is to organize a single online market for online delivery of public and private services and allow data access across the region.

Since SADC, EAC, and COMESA share members, consolidating their various regulatory frameworks should in theory be not too difficult. The Tripartite Free Trade Area (TFTA) between these three RECs can be a starting point for finding a common ground to take into the AfCFTA. However, as of now TFTA only has 8 ratifications and needs 14 to come into force.

Recent National E-commerce Strategies and Policies: Cases of Kenya and Egypt

At the national level, Kenya's ICT sector has made strides with mobile payment solutions and telephony services. Kenya also has been active in adopting legislations and reforms to enhance its e-commerce regulatory framework. This is reflected in its recently adopted (in 2019) Five-Pillar Digital Economy Blueprint¹¹ to facilitate the development of the digital economy ecosystem. Kenya's government has taken on an approach of developing adaptive policies, testing new regulations, focusing on outcomes, tailoring regulations to fit different segments, and coordinating efforts at regional, national and international level. It highlights the importance of open data for e-commerce growth and encourages the establishment of home-grown data centres. The blueprint also stresses on the need for flexible regulatory approach when addressing new fast growing technologies, i.e. Artificial Intelligence (AI) and Blockchain technology.

¹¹ Communication Authority (CA) of Kenya (2019), Kenya Digital Economy Blueprint: Powering Kenya's Transformation, Nairobi: Ministry of ICT. Available at: <https://ca.go.ke/wpcontent/uploads/2019/05/Kenya-as-Digital-Economy-Blueprint.pdf>

¹² The study is available at this link on the website of the Ministry of Communications and Information

According to the study, Egypt also has a vibrant ICT sector with an already well developed infrastructure of data centres and a mature retail market, showing great promise for e-commerce growth. Egypt also has maintained its position as one of the top global destinations for contact centre and business process outsourcing (BPO) services (*Ibid*). Despite this, Egypt was ranked 113th in the UNCTAD B2C index for 2018, signifying that there is still untapped potential. According to the study, barriers that still exist are largely related to consumer and businesses cultural orientations and preference for face-to-face and cash-based transactions as well as a weak infrastructure for online payments and postal delivery.

Egypt has also been making efforts to set up an infrastructure for digital payments and boosting mobile money through a new set of regulations from the Central Bank of Egypt since 2016 and the creation of a National Payments Council since 2017. Yet still, households and businesses have both claimed to have a lack of knowledge about e-commerce as evidenced in Internet at a Glance: Statistical Profile, a report published in 2015 by the Ministry of Communications and Information Technology of Egypt¹². To fully leverage the benefits of e-commerce, Egypt, with support from UNCTAD, developed an E-commerce Strategy for Egypt (2017)¹³ and identified objectives and relevant programmes for to pursue to tap into e-commerce growth potential.

Kenya and Egypt's case studies evidence the differing barriers that each African country must face in order to realize the full potential of e-commerce. AfCFTA has the monumental task of helping each country overcome its relevant obstacles and then harmonizing those national efforts into a continental one.

E-commerce in the WTO: Implications for AfCFTA

Technology: http://www.mcit.gov.eg/Upcont/Documents/Publications_1272015000_Measuring_the_Digital_Society_in_Egypt_12_.pdf

¹³ The full strategy document is available at: https://unctad.org/en/PublicationsLibrary/dt1stict2017d3_en.pdf

Electronic commerce first gained recognition in the WTO through the 'Declaration on Global Electronic Commerce' at the Second Ministerial Conference in May 1998. The Declaration proposed establishing a work programme to deal with any issues arising from trade centered around electronic commerce. The WTO E-commerce Work Programme was then established in September 1998. For the sole purpose of use by the Work Programme, the following definition of e-commerce was adopted: "the production, distribution, marketing, sale or delivery of goods and services by electronic means"¹⁴.

A key objective of the WTO Work Programme on E-Commerce is to unveil the relevance of e-commerce to existing WTO agreements governing the current multilateral trading system. One of the agreements most relevant to e-commerce is the General Agreement on Trade in Services (GATS), with most of the content contributing to e-commerce transactions fallig in its scope. GATS approach is argued to be irrespective of the technological methods of delivery, and this "technological neutrality" allows GATS to deal with digital products such as e-books and other downloadable media. GATS also has rules in its legal framework for telecommunications and financial services.

The WTO Information Technology Agreement (ITA) deals with the trade of information and communication products. These products serve as foundational equipment for e-commerce. Standards and regulations on ICT products are covered by the Agreement on Technical Barriers to Trade. The Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS) deals with intellectual property rights including protection of copyright-protected digital products bought and sold through e-commerce trade as well as the technologies behind e-commerce as a platform. The Trade Facilitation Agreement (TFA) deals with the implementation and maintenance of import and export processes that can make e-commerce transactions as cost-effective and fast as possible.

The currently biennially renewed moratorium on customs duties on electronic transmissions has

increasingly become a significant subject of debate. As more and more physical goods are now being substituted by digital versions, developing members have started inquiring about the effects of this digitalization trend on their tariff revenues. Another complication is the rise of 3D printing, where digital information results in a tangible end-product exempt from customs duties. The WTO's pre-existing rules do not fully encompass e-commerce at the multilateral level, raising concerns among members that the agreements are ill-equipped for the digitalization of the global economy. Specifically, the rules depend on distinctions between good and service, whereas digitalization is blurring those distinctions. However, these 'New Issues' are seen by various developing countries as a way to detract from work on the Doha Development Agenda. Any decision on either issue, however, can only be taken if all members are in agreement.

In Nairobi 2015 Ministerial Conference (MC), the New Issues vs completing the Doha Development (DDA) round debate intensified, with some members proposing e-commerce among new issues to consider under WTO. Developing countries, and particularly African countries, argued against the new issues and called them distractions to delay the resolution of the DDA.

However, developed countries' interest in bringing e-commerce to WTO negotiating table only increased. In an indication to how e-commerce is shaping the future of Global trade, in 2016, the United States shared a 'non-paper' on Concepts for Constructive Discussions on Ecommerce . The UNECA. AU & AfDB Report on Assessing Regional Integration in Africa VIII (2017), argued that nine of the sixteen trade policies that the US put forward in the non-paper were limiting African policy space, since Africa's digital capacities were noticeably behind those of the developed world and acted as a barrier to a fair competition.

At the Eleventh MC in December 2017, after failing to advance discussion on 'new issues', 71 members of the WTO adopted a Joint Ministerial Initiative (JSI) through a joint ministerial statement on e-commerce. The signatories were expanded and by April 2020, totalled 84 signatories of which 6 were African countries. The

¹⁴ WTO. (1998b). Work programme on electronic commerce. Available at : https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S0

[09-DP.aspx?language=E&CatalogueIdList=31348&CurrentCatalogueIdIndex=0&FullTextHash=371](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S09-DP.aspx?language=E&CatalogueIdList=31348&CurrentCatalogueIdIndex=0&FullTextHash=371)

signatories negotiate within six Focus Groups. According to the study, and based on the examination of the reports from facilitators of the JSI negotiation rounds, the issues under JSI negotiations, are very similar to the ideas proposed by the US back in July 2016. Study also observes three key points of contention in the JSI process: the relation between the JSI output and WTO existing rules; the digital divide that is an obstacle to developing countries and LDCs effectively participating in the negotiations, and finally data access and flow issues. Committing to multilateral rules on data while not adopting a national or regional data policy approach can potentially limit Africa’s policy space.

Positioning Africa in the Global Debate on Cross-border Data Flows

Data is considered the driving force of the digital era. Data’s increase in importance has caused government interest in data regulation, with the majority restriction policies being in the Asia-Pacific, followed by Europe, and then the Americas. Africa has the fewest data restriction policies in percentage terms. While data restriction can cause disruptions in global trade of good and services, restrictive measures may be allowed under GATS or GATT, as long as it serves a specific public policy objective that needs such measures, such as public morals or privacy of individuals. China is an example of maximum use of measures limiting cross border data flows and facilitating technology transfer to clone business models of international competitors before advancing towards e-commerce.

The study advances that an African regional approach to formulating digital industrial policies can offer a middle way between signing off to multilateral rules that liberalise e-commerce and data (thus limiting Africa’s policy space and aggravating the digital divide), and adopting costly digital protectionism policies that can burden their economies rather than promote growth.

Conclusion

The study concludes by advancing a four-step approach to formulating a continental strategy that will also harmonize regional regulations in AfCFTA negotiations (See Figure 2):

The first step is to realize the potential of SMEs by helping them navigate the cross-border e-

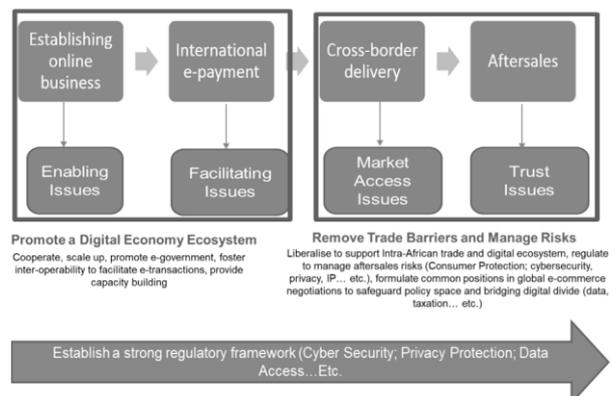
commerce process chain and overcome the accompanying four pyramidal issues, by establishing a digital ecosystem at national and regional levels, then upscaling them at the continental level.

The second step is to adopt the AU DTS as a starting point towards formulating the AfCFTA e-commerce Protocol. The strategy adopts a bottom-up approach (as advised in the first step) and has envisaged a role for AfCFTA to play under the trade section, and that is to *‘Promote intra-African integration in digital trade to achieve wider participation by enterprises in national, regional and international e-commerce (especially cross-border)’*.

The third step urges African countries to take a flexible approach towards developing a regulatory framework that accounts for the varying market sizes and features across the continent. AfCFTA negotiations can look at best practices from different countries and RECs perhaps drawing from COMESA’s DFTA, EAC and World Bank’s Digital Single Market strategy, Kenya’s digital economy blueprint, and Egypt’s ICT sector.

Step four stresses on the importance for Africa to formulate a common position and policy framework to issues of interest in the international and multilateral e-commerce negotiations, to ensure preserving the continent’s policy space while promoting considering digital industrial policies that would bring the continent into the 4th Industrial revolution (Industry 4.0).

Figure 2: A graphic presentation by Ismail synthesising the 4 step approach to ecommerce to be considered under AfCFTA’s:



Source: Ismail, author of “Mobilising E-Commerce for Development in Africa through AfCFTA” Study.



CUTS International, Geneva

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